

These are the tentative rulings for civil law and motion matters set for Thursday, October 3, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, October 2, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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**1. M-CV-0051561      Newton, Lori et al. vs. Delta Brands Inc. et al**

Plaintiffs' motion for change of venue is dropped from calendar as no moving papers were filed with the court.

**2. M-CV-0057730      BH Financial Services, LLC vs. Leidecker, Jack D.**

Plaintiff's motion to deem matters admitted is dropped from the calendar as no moving papers were properly filed with the court.

**3. M-CV-0058024      Perry, Todd vs. Wells Fargo Home Mortgage**

Defendant Wells Fargo Bank's Demurrer to the Complaint and the hearing for Consolidation and Reclassification of cases are continued, on the court's own motion, to **Tuesday, October 8, 2013 at 8:30 a.m. in Department 42** to be heard by the **Honorable Charles D. Wachob**.

**4. M-CV-0058674      U.S. Bank, N.A. vs. Skiff, Bob**

Defendant's Motion to Set Aside Entry of Default Judgment is continued to October 17, 2013 at 8:30 a.m. in Department 40 at the request of the moving party.

**5. M-CV-0059374      Sequoia Equities, L.P. vs. Noguchi, Linda**

Plaintiff's Motion to Appoint Counsel

Plaintiff's motion is denied without prejudice. Defendant has appeared in the action and there is no necessity for the limited appointment of counsel at this time.

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### Defendant's Demurrer

Defendant's Demurrer to the Complaint is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.)

The complaint complies with Code of Civil Procedure §1166 as (1) the complaint has been verified, (2) the facts for which recovery is based are sufficiently set forth in the complaint, (3) the premises are described with reasonable certainty, and (4) the method for service is attached to the complaint.

Defendant is ordered to file and serve an answer or denial on or before October 8, 2013. (CCP§1167.3.)

#### **6. S-CV-0028742      Tipton, Kyong, et al vs. Elliott Homes, Inc.**

Plaintiffs' unopposed Motion for Leave to File a Second Amended Complaint is granted. The court has broad discretion in granting a motion to amend a pleading and such discretion is usually exercised liberally to permit amendments to the pleading. (*Howard v. County of San Diego* (2010) 184 Cal.App.4th 1422, 1428.) Plaintiffs' motion is brought in a timely fashion and there is no showing of prejudice to the other parties.

Plaintiffs' second amended complaint shall be filed and served on or before October 11, 2013.

Cross-defendants' request for telephonic appearance is granted. Cross-defendants are informed that they must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

#### **7. S-CV-0028942      Homa, Eitan, et al vs. NHJV-Tahoe-Phase I, G.P.**

##### Plaintiffs' Motion to Amend Judgment

##### Ruling on Evidentiary Objections

Hyatt Hotels' objections are overruled in their entirety.

##### Ruling on Motion

Plaintiffs' motion is denied. The court has inherent authority under Code of Civil Procedure section 187 to "amend its judgment at any time so that the judgment will properly designate the real defendants." (see *Dow Jones Co. v. Avenel* (1984) 151 Cal.App.3d 144, 148-149.) In this instance, plaintiff has failed to present sufficient

evidence to warrant the court exercising its inherent authority in light of their prior knowledge of Hyatt Hotels' involvement in project in addition to their agreement to enter into a stipulated judgment.

**8. S-CV-0029093            Hammer Lane Management, LLC, et al vs. HLMS, LLC**

Plaintiffs' Motion for Determination of Privilege Claims and Sanctions is continued, on the court's own motion, to **Tuesday, October 8, 2013 at 8:30 a.m. in Department 42** to be heard by the **Honorable Charles D. Wachob**.

**9. S-CV-0029600            Enviro-Building Systems, Inc., et al vs. Galvacore, Inc.**

The motion to quash subpoenas is dropped from the calendar at the request of the moving party.

**10. S-CV-0030940            Gonzalez, Daniel A., et al vs. Skornicka, Joel L., et al**

The court appointed referee's unopposed Motion to Confirm Sale is granted. The court confirms the referee's sale of the home as outlined in his Report of Sale filed on September 9, 2013.

Defendants' request for telephonic appearance is granted. The parties are informed that they must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

**11. S-CV-0031148            Mazzoni, Nello, et al vs. Centex Real Estate Corp., et al**

Cross-defendant Everest National Insurance Company's Demurrer to Cross-Complainant St. Paul Fire and Marine Insurance Company's Cross-Complaint is dropped from the calendar at the request of the moving party.

**12. S-CV-0031294            Maurice, Timothy, et al vs. Zone 4344 Properties, et al**

Defendants' unopposed Motion for Order Determining Good Faith Settlement is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasors' proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

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**13. S-CV-0031332                      Tsarnas, Alex vs. City of Roseville, et al**

Defendants' Motion for Summary Judgment, or in the alternative, Summary Adjudication is continued to **October 24, 2013 at 8:30 a.m. in Department 43** to be heard by the **Honorable Michael W. Jones**. The court finds there is good cause to continue the motion to be heard within 30 days of trial, along with extending the time for filing of opposition and reply papers, based upon the substitution of counsel for plaintiff that was filed on October 1, 2013. (Code of Civil Procedure section 437c(a), (b)(2), (4).) Plaintiff shall file his opposing papers, by fax or personal service, on or before October 11, 2013 at 1:00 p.m. Defendants shall file their reply papers, by fax or personal service, on or before October 18, 2013 at 1:00 p.m.

**14. S-CV-0031334                      Carino, Glo Marie, et al vs. Simmons, Audry Mae, et al**

Jose Valdez's Motion to be Relieved as Counsel for plaintiff Glo Marie Carino is granted and he shall be relieved as counsel of record effective upon the filing of the proof of service of the signed order upon plaintiff Glo Marie Carino.

**15. S-CV-0031486                      Patel, Kanu U., et al vs. Berger, Scott A., et al**

Defendants' Demurrer to the First Amended Complaint

Ruling on Request for Judicial Notice

Defendants' request for judicial notice is granted in its entirety.

Ruling on Demurrer

The demurrer is sustained without leave to amend. A demurrer may be brought upon any grounds that appear on the face of the complaint along with matters that are judicially noticeable. (CCP§4030.30(a).) A demurrer is also available where the pleading does not state sufficient facts to constitute a cause of action. (CCP§430.10(e).) It tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.)

The entire FAC is barred by the doctrine of res judicata. “ ‘The doctrine of res judicata rests upon the ground that the party to be affected, or some other with whom he is in privity, has litigated, or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction, and should not be permitted to litigate it again to the harassment and vexation of his opponent. Public policy and the interest of litigants alike require that there be an end to litigation.’ [Citation.] The doctrine applies when 1) the issues decided in the prior adjudication are identical with those presented in the later action; 2) there was a final judgment on the merits in the prior action; and 3) the party against whom the plea is raised was a party or was in privity with a party to the prior

adjudication. [Citation.] Even if these threshold requirements are established, res judicata will not be applied ‘if injustice would result or if the public interest requires that relitigation not be foreclosed. [Citations.]’ [Citation.] To determine whether to sustain a demurrer on res judicata grounds, judicial notice may be taken of a prior judgment and other court records. [Citations.]” (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Association* (1998) 60 Cal.App.4th 1053, 1065.)

A review of the FAC and the documents subject to judicial notice show that the prior action was brought by plaintiffs against the moving defendants in Placer Superior Court. (Defendants’ Request for Judicial Notice, Exhibit A.) The plaintiffs dismissed the prior action on July 20, 2012. (Id. at Exhibit B.) “ ‘Res judicata precludes the piecemeal litigation by splitting a single cause of action or relitigation of the same cause of action on a different legal theory or for different relief.’ [Citation.]” (*Mycogen Corp. v. Monsanto Co.* (2002) 28 Cal.4th 888, 897.) Plaintiffs’ injury in both actions is the same. The dismissal was entered in the prior action and involved the same parties so the doctrine of res judicata completely bars the current action.

Defendants’ Motion to Strike the FAC

In light of the court’s ruling on the demurrer, the motion is dropped as moot.

Defendants’ Motion for Summary Judgment, or in the alternative, Summary Adjudication

In light of the court’s ruling on the demurrer, the motion is dropped as moot.

**16. S-CV-0031950          Hodgson, Fredrick, et al vs. East Bay Investors, LLC**

Attorney Allan Frumkin’s Motion to be Relieved as Counsel is continued, on the court’s own motion, to October 17, 2013 at 8:30 a.m. in Department 40. Counsel is to provide the court with a status of the bankruptcy and its effect on his current motion.

**17. S-CV-0032406          Beadle, Marva E. vs. Allied Trustee Services, et al**

The two demurrers are continued, on the court’s own motion, to **Tuesday, October 8, 2013 at 8:30 a.m. in Department 42** to be heard by the **Honorable Charles D. Wachob**.

**18. S-CV-0032724          Kandris, Thomas P., et al vs. Gyori, Jeremy, et al**

Plaintiffs’ Motion to Compel Further Responses to Special Interrogatories from Defendant Jeremy Gyori and Plaintiffs’ Motion to Compel Further Responses to Special Interrogatories from Defendant Gyori Development Corporation

The court has carefully considered the original moving papers and the supplemental briefing of the parties for both motions. Both motions are denied. Plaintiffs’ request for sanctions is denied. Defendants’ request for sanctions is denied.

Plaintiffs' Motion to Compel Compliance to Demands for Production of Documents as to Defendant Jeremy Gyori

The motion is granted as to the documents that defendant identified have not yet been produced. Defendant shall serve verified responses and responsive documents, without objections, on or before October 18, 2013. The requests for sanctions are denied.

Plaintiffs' Motion to Compel Compliance to Demands for Production of Documents as to Defendant Gyori Development Corporation

The motion is granted as to the documents that defendant identified have not yet been produced. Defendant shall serve verified responses and responsive documents, without objections, on or before October 18, 2013. The requests for sanctions are denied.

Defendants' Demurrer to the First Amended Complaint (FAC)

A party may demur where the pleading does not state facts sufficient to constitute a cause of action. (CCP§430.10(e).) A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or accuracy of the described conduct. (*Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787.) As such, the allegations in the pleadings are deemed to be true no matter how improbable the allegations may seem. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.)

A review of the FAC shows that plaintiffs have sufficiently pled the third, fifth, and sixth causes of action against defendants Jeremy Gyori and Gyori Development Corporation. Thus, the demurrer is overruled as to these defendants.

However, the FAC fails to allege any factual allegations as to defendant Platte River Insurance Company (Platte River). Therefore, the demurrer is sustained as to Platte River.

To reiterate, the demurrer is overruled as to defendants Jeremy Gyori and Gyori Development Corporation. The demurrer is sustained with leave to amend as to defendant Platte River.

The second amended complaint shall be filed and served on or before October 18, 2013.

**19. S-CV-0032912          Duerst, Ryan J. vs. Superior Court of Calif. County of Placer**

The demurrer and motion to strike are continued, on the court's own motion, to **October 16, 2013 at 8:30 a.m. in Department 3 located at the Historic Courthouse** in Auburn to be heard by the **Honorable Angus Saint-Evens**. The parties are to personally appear at the continued hearing date. No tentative ruling will be issued.

**20. S-CV-0032961****Barkho, Peter vs. California Unemployment Insurance**

As an initial matter, the court notes that it afforded plaintiff an opportunity to re-notice serve the motion on defendant at the September 3, 2013 hearing. Plaintiff failed to re-notice or serve the motion. Therefore, the court rules as follows:

Petitioner's Motion to Set Aside Default is denied. First, there is no proof of service in the court's file which indicates that respondent was served with the motion as required. Rather, the proof of service states that this court was served with the motion. Even if the motion was properly served, the same result would obtain. Petitioner provides no factual support for his assertion that equitable tolling could apply to his petition, and fails to submit a copy of the proposed pleading to be filed, as required by Code of Civil Procedure section 473(b).

**21. S-CV-0033146****Costo, Jaime vs. JP Morgan Chase Bank, N.A.**Defendant's Demurrer to the ComplaintRuling on Request for Judicial Notice

Defendant's request for judicial notice is granted as to Exhibits A, C, D, E, F, G, and H subject to the court's evidentiary rulings. Defendant's request is denied as to Exhibit B. The court clarifies that "taking judicial notice of a document is not the same as accepting the truth of its contents or accepting a particular interpretation of its meaning." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.)

Ruling on Objections

Plaintiff's objections to Exhibits A, C, D, E, F, G, and H are overruled. Plaintiff's objection to Exhibit B is moot in light of the court's ruling on defendant's request for judicial notice.

Ruling on Demurrer

Defendant's demurrer is overruled. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.)

There has been an insufficient showing that plaintiff's husband is an indispensable party to establish a defect in the complaint pursuant to CCP§430.10(d). In reviewing the complaint as a whole, plaintiff has pled sufficient facts to establish the breach of contract, negligent misrepresentation, promissory estoppel, and UCL violation causes of action. Hence, the complaint withstands the demurrer.

Defendant shall file and serve its answer or general denial on or before October 18, 2013.

Defendant's request for telephonic appearance is granted. Defendant is informed that he must make arrangements for the telephonic appearance through CourtCall pursuant to Local Rule 20.8.A.2.

**22. S-CV-0033308          Stacy Deanne Johnson vs. Green Tree Servicing, et al.**

Defendant's Demurrer is continued to October 24, 2013 at 8:30 a.m. in Department 40 to afford her more time to respond as she seeks new counsel.

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